

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

DENNIS JAMES SMITH, SR. *et al.*
ADC #120631

PLAINTIFFS

V.

NO: 5:08CV00085 BSM/HDY

LERON MEEKS *et al.*

DEFENDANTS

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge Brian S. Miller. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than eleven (11) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence proffered at the hearing before the District Judge (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.

3. The detail of any testimony desired to be introduced at the hearing before the District Judge in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and "Statement of Necessity" to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

DISPOSITION

Plaintiffs Dennis James Smith, Sr., Marie Smith, and Florida Mae Hewing, filed this complaint (docket entry #1), on March 27, 2008. The \$350.00 filing fee was not paid, and no Plaintiff filed an application for leave to proceed *in forma pauperis*. On March 31, 2008, each Plaintiff was ordered to submit, within 30 days, either the full \$350.00 filing fee, or a completed application for leave to proceed *in forma pauperis* (docket entry #2).

Plaintiffs Marie Smith, and Hewing, failed to respond to the order whatsoever, and their claims were dismissed on June 10, 2008 (docket entry #14), leaving Dennis James Smith, Sr., as the lone Plaintiff. Dennis James Smith, Sr., did file an incomplete application for leave to proceed *in forma pauperis* (docket entry #4) that was denied on May 14, 2008 (docket entry #7). In the order denying Plaintiff's application for leave to proceed *in forma pauperis*, the Court also ordered him to file a properly completed *in forma pauperis* application, or the \$350.00, as well as an amended complaint, within 30 days. More than 30 days has passed, and Plaintiff has not filed a properly

completed application for leave to proceed *in forma pauperis*. Under these circumstances, the Court concludes that Dennis James Smith Sr.'s claims should be dismissed without prejudice for failure to comply with Local Rule 5.5(c)(2). *See Miller v. Benson*, 51 F.3d 166, 168 (8th Cir. 1995) (District courts have inherent power to dismiss *sua sponte* a case for failure to prosecute, and exercise of that power is reviewed for abuse of discretion).

IT IS THEREFORE RECOMMENDED THAT:

1. Plaintiff's complaint be DISMISSED WITHOUT PREJUDICE for failure to comply with Local Rule 5.5(c)(2).
2. The Court certify that an *in forma pauperis* appeal taken from the order and judgment dismissing this action be considered frivolous and not in good faith.

DATED this 20 day of June, 2008.



UNITED STATES MAGISTRATE JUDGE